IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17/04/2003

CORAM

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

CIVIL REVISION PETITION NO.3427 OF 1999
AND
C.M.P.NO.19280 OF 1999.

P.Lakshmanan ... Petitioner

-Vs-

1.M.Krishnappa
2.K.Pappanna @ K.Munisamappa ... Respondent

Civil Revision Petition filed under Section 115 of the Code of Civil Procedure for the relief as stated therein.

For petitioners : Mr.P.Mani

For respondents : Mr.V.Raghavachari

:O R D E R
The above civil Revision Petition is directed against the fair and decretal order dated 5.7.1999 made in I.A.No.48 of 1998 in A.S.No.50 of 1997 by the Court of Subordinate Judge, Hosur.

2. Tracing the history of the above civil revision petition coming to be filed, it comes to be known that the petitioner herein has filed the suit in O.S.No.1 of 1995 on the file of the Court of District Munsif, Hosur praying to declare his easementary rights by using the common way on Western side of the plaintiff's shed in the house site and for permanent injunction restraining the defendants from interfering with the plaintiff's easementary rights. The said suit having been dismissed by the trial Court by its judgment dated 31.7.1997, the petitioner/plaintiff preferred an appeal in A.S.No.50 of 1997 before the Court of Subordinate Judge, Hosur. Pending the said appeal, the petitioner/plaintiff has filed a petition in I.A.No.48 of 1998 before the lower appellate Court under Order 6 Rule 17 CPC praying permission of the Court to amend the plaint thereby including the relief of mandatory injunction also in the plaint directing the defendants to demolish and remove the building and such other construction put up by them over the suit property and on their failure to do so, the same to be carried out through the process of the Court. The said petition having been dismissed by the lower appellate Court, the appellant/ plaintiff has come forward to file the above civil revision petition on certain grounds as brought forth in the grounds of revision.

3. During arguments, the learned counsel for the petitioner would submit that the original relief claimed in the suit was for a declaration of the easementary right to use the common pathway and for permanent injunction from interfering with the petitioner's right to use the common pathway; that since the respondents made attempts to put up pillars and structures on the common pathway, the I.A.No.48 of 1998 was filed in the appeal suit with the same pleadings and additional relief such as mandatory injunction to be added along with the earlier reliefs and the same having been dismissed by the lower appellate Court as per its order dated 5.7.1999, the petitioner has come forward to file the above civil revision petition. The learned counsel for the petitioner would end up his argument citing from an order of the learned single Judge of this Court in PALANIAMMAL vs. V.K.RAMANATHAN AND 4 OTHERS reported in 2002(1)CTC 618 regarding the amendment of the pleadings, the crux of which is given in para No.8 of the said order, which is extracted hereunder:

"Time and again the Supreme Court of India has laid down that the power to allow the amendment is wide, but however the same cannot be claimed as a matter of right and under all circumstances and that the Courts while deciding such prayers should not adopt a hyper technical approach but on the other hand should adopt liberal approach particularly in cases where other side can be compensated with costs. Technicalities of law should not be permitted to hamper the administration of justice between the parties. Amendments are allowed in the pleadings to avoid multiplicity of litigation. Similarly all amendments of the pleadings should be allowed which are necessary for determination of the real controversies in the suit provided the proposed amendment does not alter or substitute a new cause of action on the basis of which the original lis was raised or defence taken. The proposed amendment should not cause such prejudice to the other side which cannot be compensated by costs and no amendment should be allowed which amounts to or results in defeating a legal right accruing to the opposite party on account of lapse of time."

4. On the contrary, the learned counsel appearing on behalf of the respondent would submit that even on the date of institution of the suit, this relief that is sought for anew in the appeal suit was in existence and was available for the petitioner, but he never sought for the removal of any of these constructions which are now sought to be done. Reading out certain passages from the pleadings of the petition, the learned counsel would exhort that the suit is of the year 199 5 and the petitioner, at the stage of the appeal, is not entitled for such a luxurious relief and would cite a judgment of this Court delivered in A.RAMACHANDRA NAIDU vs. KANDASWAMI MUDALIAR reported in AIR 1949 Madras 416 wherein way back in the year 1948 itself, in a suit for damages, brought by the plaintiff in his own personal capacity, an amendment of the plaint seeking to describe the plaintiff as the manger of the joint Hindu family was asked to be allowed, this Court has held:

"An enlargement of the scope of a plaint need not necessarily mean asking for more. Retaining what one has asked for, when one will be entitled to less will also amount to an enlargement of the plaint."
"....The amendment could not be allowed where the suit by the manger as such

had become barred by limitation since the date of the plaint."

5. The learned counsel for the respondents would also cite various other orders passed by the upper forums of law such as (i) KAMAKHYA NARAIN SINGH vs. STATE OF BIHAR (AIR 1957 PATNA 30) and (ii) MUTHU KRISHNA NAIDU AND OTHERS vs. T.M.THAMOTHARA CHOWDARY AND OTHERS ((1978) I MLJ 351).

6. So far as the first judgment cited above is concerned, the Division Bench of the Patna High Court has held:

"Where in a suit for declaration and injunction the plaintiff did not ask for any relief of damages on basis of breach of agreement, the plaintiff will not be allowed to amend his plaint for including such relief at a stage when the claim has become barred by limitation under Art.109 Limitation Act."

7. In the second judgment cited above, a learned single Judge of this Court has held:
"The stage at which the plaintiffs could have asked for amendment was at the time when the suit was pending or at any rate when the plaintiffs preferred an appeal before the lower appellate Court. Even in the trial Court, they did file a petition asking for an alternative relief of possession, but when that petition was returned for some compliance, the plaintiffs did not re-present the same. Therefore, the petition for amendment could not ordered."

Citing the above judgments, the learned counsel for the respondents would pray to dismiss the above civil revision petition.

8. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for both, needless to mention that it is an Interlocutory Application filed under Order 6 Rule 17 CPC praying for an amendment of the plaint to be made when the matter was pending on appeal before the appellate Court. Though it is a well settled law that a formal amendment without either changing the cause of action or altering the structure of the plaint could be allowed at any stage of the suit or even in rarest of rare cases at the time of the filing of the appeal, here is a case in which the petitioner has sought for an amendment to be carried out during the pendency of the appeal which according to the respondents is not only highly belated since the very same purpose for which the amendment is sought to be introduced into the plaint was available for the petitioner, admittedly from his pleadings, right from the time that he filed the suit, but, having not chosen to file an application of this sort during the pendency of the suit particularly while the suit was under process and even failing to do the same along with the appeal memo. at the time of preferring the appeal, now, during the pendency of the appeal suit, the petitioner has come forward to file an application of this sort before the appellate Court which has been dismissed for want of credibility and reasons on the part of the petitioner to have come forward to file such an application at the time when he had lost all his opportunities in the suit.

9. However, the petitioner, submitting to avoid the multiplicity and to avail the opportunity at least at the stage of the appeal,

would plead to permit him to effect the amendment sought for.

10. On the part of the respondents, the petition would be very strongly opposed on grounds that it is only a tactic adopted anew by the petitioner to protract the proceedings since in spite of such an opportunity being available for the petitioner right from the time that he filed the suit, knowingly he did not avail the same till the suit was over and only to delay the process of the Court and to defeat the genuine rights of the respondents, the petitioner has come forward to file such an application and hence it deserves only to be dismissed.

11. There is sufficient force in the arguments of the respondents supported by the judgments cited on their part, delivered by different upper forums of law at different points of time, and therefore this Court does not find any valid or tangible reason to cause interference into the well considered and merited order passed by the trial Court and hence the following order:

In result,
(i)the above civil revision petition fails and the same is dismissed.
(ii)The fair and decretal order dated 5.7.1999 made in I.A.No.48 of 1 998 in A.S.No.50 of 1997 by the Court of Subordinate Judge, Hosur is hereby confirmed.

Consequently, C.M.P.No.19280 of 1999 is also dismissed.
No cost.

17.4.2003.
Index: Yes
Internet: Yes
Rao

To

The Subordinate Judge,
Hosur.

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